

AMENDED IN ASSEMBLY AUGUST 6, 2012

AMENDED IN ASSEMBLY JULY 3, 2012

AMENDED IN ASSEMBLY JUNE 12, 2012

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 29, 2011

SENATE BILL

No. 320

Introduced by Senator Wright

February 14, 2011

An act to add Sections 10968, 10969, and 10970 to the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

SB 320, as amended, Wright. Public social services: hearings.

Existing law authorizes an applicant for, or recipient of, public social services who is dissatisfied with certain actions of the county welfare department to request a hearing from the ~~State Department of Social Services~~ *state department administering the social services*. Existing law requires the hearing to be conducted by an administrative law judge, with an exception, and authorizes the administrative law judge, under certain circumstances, to render and adopt final decisions, *with* which decision the county director is required to comply ~~with~~ and execute.

This bill would require the county appeals representative to review all evidence in the county's possession prior to the hearing and, if the representative finds prescribed occurrences, to offer the claimant a conditional withdrawal or notice of action, as specified. This bill would require the conditional withdrawal to ~~specify the actions that the applicant or recipient and the county is required to complete within 30~~

~~days of the conditional withdrawal being signed by the claimant and received by the county representative, except as provided, and would require the county to issue to the claimant a notice of action describing its compliance with the decision~~ *list the agreed-upon conditions that the claimant is required to meet, and require the county to issue any benefits for which the claimant is eligible following the claimant's meeting of those conditions.* This bill would authorize a claimant to file for and reopen a state hearing under certain circumstances, at which the administrative law judge may render a decision ~~and order the county to comply with that decision.~~

~~This bill would provide a claimant with the right to an in-person hearing, as defined, and authorize a claimant to request a hearing conducted by telephone, or other electronic means, or at his or her home. This bill would require the notice informing the claimant of that certain notices relating to the hearing to contain prescribed information. This bill would require the state department administering the social services to determine the format of the hearing if the county and the claimant disagree on its format.~~

Existing law requires, if regulations require an agency to write a position statement concerning the issues in question in a fair hearing or if the agency chooses to develop such a statement, that not less than 2 working days prior to the date of the hearing the agency make available to the applicant for, or recipient of, public social services a copy of the agency's position statement, with an exception.

This bill would require the county representative to prepare and transmit to a claimant who is scheduled for specified types of hearings and his or her representative the position statement so that it is received at least 2 working days prior to the hearing. This bill would require the administrative law judge to determine whether the county has met its burden of proof of establishing a prima facie case, with exceptions. This bill would require the administrative law judge to grant the claim if the judge finds that the county has not met its burden.

By imposing a higher level of service on county appeals representatives, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would make its provisions operative upon the State Department of Social Services making a specified finding on its Internet Web site relating to the modification of court orders regarding penalties payable to claimants, as agreed to by the parties, in 2 specified cases.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10968 is added to the Welfare and
2 Institutions Code, to read:
3 10968. (a) Prior to the hearing, the county appeals
4 representative shall review all evidence in the county's possession
5 relevant to the state hearing claim.
6 (1) If the hearing concerns a claimant's eligibility for a benefit
7 or service and the county representative finds that certain acts or
8 evidence would establish the claimant's eligibility for that benefit
9 or service or concludes that the county erred, the county
10 representative shall offer the claimant a conditional withdrawal
11 ~~agreeing that the county shall issue the benefits or provide the~~
12 ~~services for which the claimant is eligible after the claimant meets~~
13 ~~conditions, if any, of the conditional withdrawal. If The conditional~~
14 ~~withdrawal shall list the agreed-upon conditions that the claimant~~
15 ~~is required to meet, which may include, but are not limited to, the~~
16 ~~provision of specific information. The conditional withdrawal shall~~
17 ~~include the requirements that the county reevaluate the case~~
18 ~~following the claimant meeting those conditions, and if the claimant~~
19 ~~is determined to be eligible for benefits or services, the county~~
20 ~~issue those benefits or provide those services for which the claimant~~
21 ~~is determined to be eligible.~~
22 (2) If the county has rescinded the proposed adverse action, the
23 county shall issue a notice of action informing the claimant of the
24 county's action and contact the client to advise the claimant the
25 action was rescinded and determine whether there were any other
26 issues for the hearing.
27 ~~(2)~~
28 (3) If the hearing concerns the validity of a CalWORKs
29 overpayment ~~or~~, a CalFresh benefit overissuance allegation, *or*

1 *both*, and the county representative does not find evidence adequate
2 to support the *allegation of the* validity of the overpayment ~~or~~,
3 overissuance ~~allegation~~, *or both*, then the county representative
4 shall offer the claimant a conditional withdrawal agreeing both to
5 cancel permanently the *allegation of the* overpayment ~~or~~,
6 overissuance ~~allegation~~, *or both*, and to refund to the claimant any
7 money already collected toward repayment of the alleged
8 overpayment ~~or~~, overissuance, *or both*.

9 (b) (1) A conditional withdrawal pursuant to this section shall
10 specify the actions ~~that both~~ *the* parties shall complete within 30
11 days from the date the county appeals representative receives the
12 conditional withdrawal form signed by the claimant. The county's
13 30-day conditional withdrawal compliance period may be extended
14 by an additional 15 days from the date the claimant completes ~~his~~
15 ~~or her~~ *the* action required by the conditional withdrawal.

16 (2) The county shall comply with the terms set forth in the
17 conditional withdrawal, and issue a notice of action to the claimant
18 describing its compliance with the terms of the conditional
19 withdrawal. The notice of action shall be sent by the county within
20 the timeframe set forth in paragraph (1). *Any aid paid pending the*
21 *outcome of the hearing shall continue until the notice of action*
22 *complying with the terms of the conditional withdrawal is issued.*

23 (3) (A) Upon receiving a timely notice of action from the
24 county, the claimant shall have 90 days, subject to the good cause
25 provisions of Section 10951, to file for a state hearing if the
26 claimant is dissatisfied with the county's actions specified in the
27 notice of action. This notice shall be treated like any other notice
28 of action.

29 (B) If the notice of action relates to the agreed upon terms of
30 the conditional withdrawal pursuant to paragraph (2), the
31 administrative law judge at the hearing may determine that there
32 is sufficient evidence in the record to render a decision resolving
33 the dispute on the merits and to order the county comply with the
34 terms of the decision.

35 (4) If the county does not issue a notice of action as required in
36 paragraph (2), the claimant may reopen the state hearing to enforce
37 the terms of the conditional withdrawal. A reopened hearing
38 pursuant to this paragraph shall address whether the county has
39 complied with the terms of the conditional withdrawal, and if the
40 administrative law judge finds noncompliance with the terms of

1 the conditional withdrawal, the judge may determine that there is
2 sufficient evidence in the record to render a decision resolving the
3 dispute on the merits ~~and to order the county comply with the~~
4 ~~decision.~~

5 (c) (1) If a written conditional withdrawal is not provided to
6 the claimant in person at the time the county and the claimant agree
7 upon the conditional withdrawal, the county shall mail the
8 conditional withdrawal to the claimant.

9 (2) ~~(A)~~ Notwithstanding paragraph (1), the county shall, *if it*
10 *has the capacity to do so, and* upon request of the claimant and
11 with the claimant's written permission, electronically transmit a
12 copy of the conditional withdrawal to the claimant.

13 ~~(B) This paragraph shall become operative only after the director~~
14 ~~of the department certifies to the Legislature that the department~~
15 ~~has the technology to implement this paragraph in compliance~~
16 ~~with privacy laws. Until this certification is made to the Legislature,~~
17 ~~the department shall report annually to the budget committees of~~
18 ~~the Legislature on the status of the technology available to~~
19 ~~implement this paragraph.~~

20 SEC. 2. Section 10969 is added to the Welfare and Institutions
21 Code, to read:

22 10969. (a) The Legislature finds and declares that claimants
23 have a right to have administrative hearings conducted in person.
24 However, the financial cost of attending an administrative hearing,
25 and the limitations on the ability to attend imposed by work,
26 training, education, living in areas lacking public transportation,
27 lack of child care coverage, illness or disability, and inclement
28 weather, may prevent a claimant from accessing a hearing and
29 exercising his or her full right to due process of law. A hearing
30 conducted by telephone, or other electronic means, would enable
31 the claimant to access the fair hearing process when he or she is
32 unable to attend the hearing in person.

33 (b) (1) For purposes of this section, "in-person hearing" and
34 "hearing conducted in person" means ~~a~~ *either of the following:*

35 (A) A hearing conducted in person with face-to-face interaction
36 between the parties.

37 ~~(c) The department shall schedule a claimant's initial hearing~~
38 ~~pursuant to this chapter as the department deems appropriate and~~
39 ~~within its resource limitations. However, a claimant shall have the~~
40 ~~right to request and receive an in-person hearing.~~

1 (B) A hearing in which the claimant appears in person, and the
2 administrative law judge appears by being physically present at
3 the hearing or by appearing by video conference with the
4 concurrence of the claimant or his or her authorized representative.

5 (2) For purposes of paragraph (1), witnesses may appear
6 telephonically at an in-person hearing or a hearing conducted in
7 person.

8 (c) When requesting a hearing, the claimant may specify on the
9 back of the notice of action, or any other appropriate document
10 for requesting a hearing, a preference for either a telephone
11 hearing or in-person hearing. The department shall modify the
12 notice of action or other appropriate document to include check
13 boxes or other similar format for purposes of this subdivision.

14 (d) (1) Following receipt of the notice of action in which the
15 claimant requests a hearing, the department shall send the claimant
16 a notice acknowledging receipt of the hearing request. The notice
17 acknowledging the receipt of the hearing request shall ~~provide~~
18 ~~information~~ include all of the following:

19 (A) A statement that the claimant has a right to an in-person
20 hearing.

21 (B) Information regarding the different formats of how a hearing
22 may be conducted, including in-person, by telephone, or other
23 electronic means, or at the claimant's home, ~~the right to an~~
24 ~~in-person hearing, and how to request a specific type of hearing~~
25 ~~before the hearing is scheduled. under specified circumstances,~~
26 ~~pursuant to subdivision (h).~~

27 ~~(1) If the notice informing the claimant of the scheduled hearing~~
28 ~~indicates the hearing shall be conducted by telephone, or other~~
29 ~~electronic means, the notice shall also inform the claimant of his~~
30 ~~or her right to have the hearing conducted in person or at the~~
31 ~~claimant's home pursuant to subdivision (g), and how to request~~
32 ~~a change in the format of the hearing, including information on~~
33 ~~the timeframe within which to make the request without extending~~
34 ~~the time in which to issue the decision.~~

35 (C) The telephone number that the claimant may call to notify
36 the department as to his or her hearing type preference.

37 (2) The notice shall be structured to provide an easy manner
38 for the claimant to select his or her hearing type preference, such
39 as check boxes, or other similar format.

1 (3) *The claimant may notify the department as to his or her*
2 *hearing type preference by telephone, mail, or other electronic*
3 *means, if applicable, and shall make this notification within 10*
4 *days of receipt of the notice acknowledging receipt of the hearing*
5 *request.*

6 (4) *If the claimant notifies the department as to his or her*
7 *hearing type preference in a timely manner, the department shall*
8 *schedule the hearing in accordance with subdivision (e).*

9 (A) *If the claimant fails to notify the department in a timely*
10 *manner, or if the claimant modifies his or her preference following*
11 *his or her original request, as stated in the response to the notice*
12 *acknowledging receipt of the hearing request, any attempt to state*
13 *a preference of hearing type, other than a preference for an*
14 *in-person hearing, shall only be considered by the department for*
15 *good cause. For purposes of this subparagraph, good cause*
16 *includes reasonably unforeseeable circumstances beyond the*
17 *claimant's control.*

18 (B) *If good cause has been established pursuant to*
19 *subparagraph (A), the department may reschedule the matter to*
20 *meet the claimant's preference if within its resource limits, and*
21 *may adjust the filing date accordingly. If the department is unable*
22 *to reschedule the preferred type of hearing within existing*
23 *resources, the department may postpone the hearing and adjust*
24 *the filing date accordingly.*

25 (e) *The department shall schedule a claimant's initial hearing*
26 *pursuant to this chapter as the department deems appropriate*
27 *within its resource limitations and shall consider the claimant's*
28 *hearing preference, as communicated to the department pursuant*
29 *to subdivision (d). However, a claimant shall have the right to*
30 *request and receive an in-person hearing.*

31 ~~(2) If the~~

32 (f) *Following the department's scheduling of the hearing, the*
33 *department shall send the claimant a notice informing the claimant*
34 *of the scheduled hearing. The notice informing the claimant of the*
35 *scheduled hearing indicates the hearing shall be conducted in*
36 *person, the notice shall also inform the claimant of the opportunity*
37 *to have the hearing conducted by telephone, or other electronic*
38 *means, or at the claimant's home pursuant to subdivision (g), and*
39 *how to request a change in the format of the hearing, including*
40 *shall include information on the timeframe within which to make*

1 the request without extending the time in which ~~to issue the~~
2 decision *is issued*. The notice shall specify good cause ~~reasons~~ to
3 change the method of the hearing, which shall include, but not be
4 limited to, lack of transportation or child care, inclement weather
5 conditions, conflicts with work or education schedules, or other
6 good cause reasons as determined by the department. *If good cause*
7 *is established, the department may reschedule the hearing to meet*
8 *the claimant's preference if within its resource limits and adjust*
9 *the filing date accordingly. If the department has scheduled the*
10 *matter for a hearing date but is unable to reset the preferred type*
11 *of hearing within an existing calendar or within existing resources,*
12 *the department reserves the right to postpone the hearing and*
13 *adjust the filing date accordingly.*

14 ~~(3) The department shall implement this subdivision in a manner~~
15 ~~that provides sufficient notice to a claimant regarding his or her~~
16 ~~ability to request a change in the format of the hearing, and shall~~
17 ~~provide on the hearing acknowledgment notice and scheduling~~
18 ~~notice a "yes" or "no" box that the claimant may check to request~~
19 ~~a change in the format of the hearing.~~

20 ~~(e) The claimant shall inform the department of his or her~~
21 ~~request to change the format of the hearing within five days of~~
22 ~~receipt of the notice of scheduled hearing. The claimant's failure~~
23 ~~to meet the five-day requirement may result in a postponement of~~
24 ~~the scheduled hearing. If the request to change the format of the~~
25 ~~hearing occurs after this five-day period and the claimant's request~~
26 ~~for a hearing conducted by telephone, or other electronic means,~~
27 ~~is granted by the department, the claimant's original filing date~~
28 ~~shall be adjusted to the date the request was granted.~~

29 ~~(f)~~

30 ~~(g) (1) If the county seeks to request an in-person hearing, the~~
31 ~~hearing may be rescheduled to an in-person hearing with the~~
32 ~~concurrence of the claimant. If the claimant disagrees, the~~
33 ~~department shall decide the format of the hearing. The department~~
34 ~~may deny a county's request for an in-person hearing for good~~
35 ~~cause, as defined in paragraph (2) of subdivision (b) of Section~~
36 ~~10951.~~

37 ~~(2) Upon its decision to change the format of a hearing that was~~
38 ~~already set, the department shall reset the hearing and give both~~
39 ~~the claimant and the county 10 days advance notice of the time,~~
40 ~~place, and format of the new hearing.~~

~~(g)~~

(h) The notice informing the claimant of the scheduled hearing shall also inform the claimant of the right to request a hearing in the claimant's home *pursuant to this subdivision*. The department may require from the claimant seeking a home hearing ~~at his or her home~~ medical verification *in advance of the hearing* demonstrating that the claimant's condition prevents the claimant from traveling to the hearing location. ~~If the claimant is unable to travel to a state hearing office and would prefer to attend the hearing by telephone, or other electronic means, the claimant may request that the hearing be conducted by telephone, or other electronic means.~~ *In determining whether to grant the request for a home hearing, the department also may consider whether the home hearing can be conducted without verified undue risk to the health and safety of the administrative law judge and all parties and witnesses, and whether a telephone hearing is a reasonable alternative. Nothing in this subdivision shall affect or impede the stipulation for judgment of Tesluck v. Swoap (1974, No. 000114).*

~~(h)~~

(i) The notice informing the claimant of ~~the time and place of the scheduled~~ hearing shall also inform the claimant how to submit evidence and other documents if the claimant or administrative law judge will be appearing by telephone, or other electronic means. *The department shall implement this subdivision in a manner that provides sufficient notice to a claimant regarding his or her ability to request a change in the format of the hearing and shall provide on the notice informing the claimant of the scheduled hearing check boxes, or on their functional equivalent, that the claimant may utilize to request a change in the format of the hearing.*

~~(i)~~

(j) Notwithstanding Section 10952.5, for applicants or recipients who are scheduled for hearings to be conducted by telephone, or other electronic means, or at the claimant's home, the county responsible for the hearing shall prepare and transmit the position statement to the claimant and his or her designated representative so that the position statement will be received at least two working days prior to the hearing. ~~The position statement may be transmitted to the claimant electronically, if the claimant has an email address and is able to receive email communications. In~~

1 *order to comply with this subdivision, the county shall make the*
2 *position statement available at the closest human services offices*
3 *to the claimant's residence, without respect to county, or, with the*
4 *claimant's written permission, electronically transmit a copy of*
5 *the position statement to the claimant. If the claimant does not*
6 *provide written permission to receive the position statement*
7 *electronically, and is unable to obtain the statement of position*
8 *from the human services office due to inclement weather, disability,*
9 *or lack of reasonably available public transportation, the county*
10 *shall mail the position statement in sufficient time that the statement*
11 *is received no later than two working days prior to the hearing,*
12 *or with permission of the claimant, may transmit the position*
13 *statement by facsimile.*

14 SEC. 3. Section 10970 is added to the Welfare and Institutions
15 Code, to read:

16 10970. (a) The county representative shall present the case
17 with appropriate evidence necessary to meet the county's burden
18 of proof of establishing a prima facie case. At the end of the county
19 presentation, the administrative law judge may determine on the
20 record whether or not the county has met its burden of proof. If
21 the administrative law judge determines that the county has failed
22 to meet its burden of proof, the claim shall be granted without any
23 further hearing, *except as provided in Section 10960.*

24 ~~(b) When determining whether the county has met its burden~~
25 ~~of proof, the administrative law judge may take the matter under~~
26 ~~submission and continue the hearing if he or she determines that~~
27 ~~the issue is too complex to make a burden of proof determination~~
28 ~~immediately following presentation of the county's case.~~

29 (e)

30 (b) Issues and claims not subject to a burden of proof
31 determination by the administrative law judge, include, but are not
32 limited to, jurisdiction, abandonment claims, and claims where
33 the claimant has failed to specify an issue and the county has been
34 unable to independently determine an issue in dispute.

35 SEC. 4. (a) *This act shall become operative following the State*
36 *Department of Social Services making a finding on its Internet*
37 *Web site that the Superior Court of Alameda County has modified*
38 *the court orders regarding penalties payable to the claimants, as*
39 *agreed to by the parties, and that will be sufficient to cover the*
40 *costs to implement the provisions of this bill, in both King v.*

1 *McMahon (1987, No. 398769) and Ball v. Swoap (1987, No.*
2 *H105716-0).*

3 *(b) Notwithstanding subdivision (a), if the department makes*
4 *the finding described in subdivision (a) prior to January 1, 2013,*
5 *this act shall become operative on January 1, 2013.*

6 *(c) The department shall make the finding described in*
7 *subdivision (a) within 30 days following the modification of the*
8 *court orders described in subdivision (a).*

9 ~~SEC. 4.~~

10 SEC. 5. If the Commission on State Mandates determines that
11 this act contains costs mandated by the state, reimbursement to
12 local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.

15

16

17 CORRECTIONS:

18 Text—Pages 2 and 9.

19